

November 17, 2010

The Regular Meeting of the Rockingham County Board of Supervisors was held on Wednesday, November 17, 2010, at 3:00 p.m. at the Rockingham County Administration Center, Harrisonburg, Virginia. The following members were present:

PABLO CUEVAS, Election District #1
FREDERICK E. EBERLY, Election District #2
DEE E. FLOYD, Election District #3
WILLIAM B. KYGER, JR., Election District #4
MICHAEL A. BREEDEN, Election District #5

Also present:

DOUGLAS L. GEIB, Registrar

JOSEPH S. PAXTON, County Administrator
THOMAS H. MILLER, JR., County Attorney
STEPHEN G. KING, Deputy County Administrator
JAMES L. ALLMENDINGER, Director of Finance
WARREN G. HEIDT, Director of Public Works
KATHARINE S. McQUAIN, Director of Recreation
FRANKLIN P. O'BYRNE, Director of Information Systems
STEPHEN N. RIDDLEBARGER, Director of Human Resources
ROBERT A. SYMONS, Fire & Rescue Chief
WILLIAM L. VAUGHN, Director of Community Development
RHONDA H. COOPER, Director of Planning
DIANA C. STULTZ, Zoning Administrator
DANIEL W. THOMPSON, Planner
TAMELA S. GRAY, Deputy Clerk
DONALD F. KOMARA, Residency Administrator
Virginia Department of Transportation

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CALL TO ORDER
INVOCATION
PLEDGE OF ALLEGIANCE.

Chairman Cuevas called the meeting to order at 3:00 p.m.

Supervisor Kyger gave the Invocation and Deputy Administrator King led the Pledge of Allegiance.

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APPROVAL OF MINUTES.

On motion by Supervisor Eberly, seconded by Supervisor Breeden and carried by a vote of 5 to 0, voting recorded as follows: BREEDEN - AYE; CUEVAS - AYE; EBERLY - AYE; FLOYD - AYE; KYGER - AYE; the Board approved the minutes of the regular meeting of October 27, 2010.

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PRESENTATION OF ROCKINGHAM COUNTY SEAL.

Mrs. Dorothy Wampler, widow of former County Treasurer Cecil Wampler, presented the Board with a framed counted cross-stitched County seal. The seal will be displayed in the County Administration Building hallway near the Treasurer's Office along with the portraits of former treasurers, including Mr. Wampler.

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REPORT FROM BRIDGEWATER COLLEGE PRESIDENT.

George E. Cornelius, the new President of Bridgewater College, was introduced to the Board. Mr. Cornelius provided an update on the College's current enrollment, faculty and dormitory construction.

Supervisor Kyger complimented Bridgewater College on the architectural design of the new dormitories which look like houses and blend in well with the homes on College Street in Bridgewater.

Chairman Cuevas expressed appreciation for Bridgewater College's contributions in the community and suggested President Cornelius contact Dr. Krishna Kodukula, Executive Director at SRI, to discuss the possibility of a joint endeavor with SRI.

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TRANSPORTATION DEPARTMENT.

The Board heard Mr. Komara's report on the activities of the Transportation Department which included updates on various road projects and routine maintenance.

Mr. Komara stated work on Bergton Road (Route 820) should be completed on schedule. In response to a question from Chairman Cuevas, Mr. Komara indicated the shoulders on Bergton Road (Route 820) will be grass and stone will be added as needed.

The repaving on Rawley Pike (Route 33 West) to the top of the mountain should be completed by December 1, 2010, he reported.

Mr. Komara has been working with Daniel Travis Layman on a DR 100 bicycle grant application for a bicycle route project on Port Republic Road (Route 253) near Rockingham Memorial Hospital, with an estimated cost of \$5,000 to \$7,000. If there is additional grant money, Supervisor Kyger noted that he would like to see the shoulders expanded on Rawley Pike (Route 33 West) and John Wayland Highway (Route 42 South) due to slow moving vehicles and horse and buggy traffic. Bicycles would also benefit from the expanded shoulders, Supervisor Kyger said. Supervisor Kyger and Mr. Komara noted that the bike and buggy lanes between Bridgewater and Dayton should be extended to Wal-Mart on John Wayland Highway (Route 42 South). Mr. Komara suggested that matching funds of 10 or 20 percent may make the project more appealing.

Supervisor Kyger requested clarification on the potential bicycle grant. Deputy Administrator King stated the group considering the grant hopes to receive in-kind or matching funds from VDOT and/or the County to show their commitment to the project and give the application more strength. The right-of-way on Port Republic Road (Route 253) has been obtained for this project, Mr. King said.

Supervisor Kyger thanked Mr. King for his efforts in preparing the bike grant.

Mr. Komara explained that the group requesting the grant will need to provide a design, and obtain a permit and bond. The grant will cover the cost of the materials needed to burn (thermoplast) markings into the pavement.

Supervisor Kyger asked Messrs. King and Komara to estimate the dollar amount of in-kind services VDOT will contribute toward this project, as well as Mr. King's time, and provide this information to Mr. Layman for inclusion in the grant application.

Supervisor Kyger expressed appreciation for the work being done on the Oakdale Road project since school buses use the bridge. Mr. Komara indicated the new bridge will be designed so it will not have to be replaced when the Bridgewater Bypass is built.

Supervisor Breeden stated the right lane turnoff between East Point Road (Route 602) and Resort Drive (Route 644) at the Massanutten Resort entrance turned out well. He noted that VDOT needs to obtain the local match to be provided by Great

Eastern Resort. Mr. Komara indicated he would like to incorporate a right-turn lane off East Point Road (Route 602).

Supervisor Eberly complimented Mr. Komara on the markings and reflectors on Harpine Highway (Route 42 North) to assist with travel in the dark.

Supervisor Floyd reported that the 35-mile per hour speed limit sign is missing from Massanetta Springs Road (Route 687) and needs to be replaced.

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2010 ELECTION AND ACCEPTANCE OF ABSTRACT OF VOTES.

Registrar Douglas Geib reported that 41% of registered County voters participated in the 2010 general election versus 49% in the 2009 election, with an increase of 711 registered voters from last November. There were 597 absentee voters. He reported that Dayton had the highest turnout at 58%, followed by Grottoes at 49% and Elkton at 48%. The largest precinct, Massanetta Springs, had 1,873 vote out of 4,586 registered voters. The power was out as Massanetta Springs for over two hours due to a traffic accident but voters were able to vote via paper ballots. The precincts were covered by 150 election officers. The cost for the election was \$2.38 per voter.

Administrator Paxton asked that Mr. Geib and the Electoral Board look at the Massanutten precinct in advance of the redistricting to determine if it will need to be split.

On behalf of the Board, Chairman Cuevas thanked Mr. Geib and his staff for conducting a smooth election.

On motion by Supervisor Kyger, seconded by Supervisor Eberly and carried by a vote of 5 to 0, voting recorded as follows: BREEDEN - AYE; CUEVAS - AYE; EBERLY - AYE; FLOYD - AYE; KYGER - AYE; the Board accepted the report from the Registrar and instructed the Clerk to include the following abstract of votes from the 2010 General Election in the minutes of the meeting:

ABSTRACT OF VOTES

Cast in the County of Rockingham, Virginia,
at the November 2, 2010 General Election, for:

MEMBER
HOUSE OF REPRESENTATIVES
 6th District

<i>NAMES OF CANDIDATES AS PRINTED ON BALLOT</i>	<i>TOTAL VOTES RECEIVED (IN FIGURES)</i>
<u>Robert W. "Bob" Goodlatte - R</u>	<u>14,585</u>
<u>Stuart M. Bain - L</u>	<u>1,024</u>
<u>Jeffrey W. Vanke - I</u>	<u>2,175</u>
Total Write-In Votes	<u>121</u>
Total Number of Overvotes for Office	<u>0</u>

ABSTRACT OF VOTES

Cast in the County of Rockingham, Virginia,
 at the November 2, 2010 Special Election, for:

PROPOSED CONSTITUTIONAL AMENDMENTS

QUESTION 1: Shall Section 6 of Article X of the Constitution of Virginia be amended to authorize legislation that will permit localities to establish their own income or financial worth limitations for purposes of granting property tax relief for homeowners not less than 65 years of age or permanently and totally disabled?

	<i>TOTAL VOTES RECEIVED (IN FIGURES)</i>
YES	<u>13,523</u>
NO	<u>3,957</u>
Total Number of Overvotes for Question	<u>0</u>

QUESTION 2: Shall the Constitution be amended to require the General Assembly to provide a real property tax exemption for the principal residence of a veteran, or his or her surviving spouse, if the veteran has a 100 percent service-connected, permanent, and total disability?

	<i>TOTAL VOTES RECEIVED (IN FIGURES)</i>
YES	<u>14,456</u>
NO	<u>3,195</u>
Total Number of Overvotes for Question	<u>0</u>

QUESTION 3: Shall Section 8 of Article X of the Constitution of Virginia be amended to increase the permissible size of the Revenue Stabilization Fund (also known as the “rainy day fund”) from 10 percent to 15 percent of the Commonwealth’s average annual tax revenues derived from income and retail sales taxes for the preceding three fiscal years?

	<i>TOTAL VOTES RECEIVED (IN FIGURES)</i>
YES	<u>9,194</u>
NO	<u>8,091</u>
Total Number of Overvotes for Question	<u>0</u>

ABSTRACT OF VOTES

Cast in the Town of Bridgewater in the County of Rockingham , Virginia
at the November 2, 2010 General Election, for:

MAYOR

<i>NAMES OF CANDIDATES AS PRINTED ON BALLOT</i>	<i>TOTAL VOTES RECEIVED (IN FIGURES)</i>
<u>Hallie D. Dinkel</u>	<u>1,386</u>
<u> </u>	<u> </u>
Total Write-In Votes	<u>20</u>
Total Number of Overvotes for Office	<u>0</u>

ABSTRACT OF VOTES

Cast in the Town of Bridgewater in the County of Rockingham , Virginia
at the November 2, 2010 General Election, for:

**MEMBER
TOWN COUNCIL**

ENTER AT LARGE OR APPROPRIATE DISTRICT OR WARD NAME

<i>NAMES OF CANDIDATES AS PRINTED ON BALLOT</i>	<i>TOTAL VOTES RECEIVED (IN FIGURES)</i>
<u>Richard L. Blackwell III</u>	<u>729</u>
<u>A. Fontaine Canada</u>	<u>1,003</u>
<u>Theodore W. "Ted" Flory</u>	<u>1,175</u>
<u>Dillina Wimer Stickley</u>	<u>1,038</u>
Total Write-In Votes	<u>10</u>
Total Number of Overvotes for Office	<u>0</u>

ABSTRACT OF VOTES

Cast in the Town of Dayton in the County of Rockingham , Virginia
at the November 2, 2010 General Election, for:

MAYOR

<i>NAMES OF CANDIDATES AS PRINTED ON BALLOT</i>	<i>TOTAL VOTES RECEIVED (IN FIGURES)</i>
<u>William W. "Buddy" Farris</u>	<u>323</u>
<u>L. J. Purcell</u>	<u>235</u>
Total Write-In Votes	<u>8</u>
Total Number of Overvotes for Office	<u>0</u>

ABSTRACT OF VOTES

Cast in the Town of Dayton in the County of Rockingham , Virginia
at the November 2, 2010 General Election, for:

**MEMBER
TOWN COUNCIL**

ENTER AT LARGE OR APPROPRIATE DISTRICT OR WARD NAME

<i>NAMES OF CANDIDATES AS PRINTED ON BALLOT</i>	<i>TOTAL VOTES RECEIVED (IN FIGURES)</i>
<u>Steven J. Dean</u>	<u>390</u>
<u>Jeff S. McNeal</u>	<u>373</u>
<u>Carolyn Hoover Ware</u>	<u>369</u>
Total Write-In Votes	<u>29</u>
Total Number of Overvotes for Office	<u>0</u>

ABSTRACT OF VOTES

Cast in the Town of Elkton in the County of Rockingham , Virginia
at the November 2, 2010 General Election, for:

MAYOR

<i>NAMES OF CANDIDATES AS PRINTED ON BALLOT</i>	<i>TOTAL VOTES RECEIVED (IN FIGURES)</i>
<u>Roy E. "Gene" Davis</u>	<u>398</u>
<u>M. Lee Dearing</u>	<u>182</u>
<u>Phillip "Rick" Workman II</u>	<u>263</u>
Total Write-In Votes	<u>9</u>
Total Number of Overvotes for Office	<u>0</u>

ABSTRACT OF VOTES

Cast in the Town of Elkton in the County of Rockingham , Virginia
at the November 2, 2010 General Election, for:

**MEMBER
TOWN COUNCIL**

ENTER AT LARGE OR APPROPRIATE DISTRICT OR WARD NAME

<i>NAMES OF CANDIDATES AS PRINTED ON BALLOT</i>	<i>TOTAL VOTES RECEIVED (IN FIGURES)</i>
<u>Harry J. Armbruster</u>	<u>463</u>
<u>Jay Tony Dean</u>	<u>465</u>
<u>Dwight E. "Gene" Kite</u>	<u>442</u>

<u>Theodore Oliver Pence</u>	<u>444</u>
<u>Wayne E. Printz</u>	<u>399</u>
Total Write-In Votes	<u>17</u>
Total Number of Overvotes for Office	<u>0</u>

ABSTRACT OF VOTES

Cast in the Town of Grottoes in the County of Rockingham , Virginia
at the November 2, 2010 General Election, for:

MAYOR

<i>NAMES OF CANDIDATES AS PRINTED ON BALLOT</i>	<i>TOTAL VOTES RECEIVED (IN FIGURES)</i>
<u>Joe L. Morris</u>	<u>493</u>
<u>Doug W. Shifflett</u>	<u>259</u>
Total Write-In Votes	<u>4</u>
Total Number of Overvotes for Office	<u>0</u>

ABSTRACT OF VOTES

Cast in the Town of Grottoes in the County of Rockingham , Virginia
at the November 2, 2010 General Election, for:

**MEMBER
TOWN COUNCIL**

ENTER AT LARGE OR APPROPRIATE DISTRICT OR WARD NAME

<i>NAMES OF CANDIDATES AS PRINTED ON BALLOT</i>	<i>TOTAL VOTES RECEIVED (IN FIGURES)</i>
<u>Marjorie S. "Midge" Funk</u>	<u>519</u>
<u>Harry T. "Tom" Messick</u>	<u>338</u>
<u>David L. Raynes</u>	<u>549</u>
<u>Mark A. Sterling</u>	<u>493</u>
Total Write-In Votes	<u>7</u>
Total Number of Overvotes for Office	<u>0</u>

ABSTRACT OF VOTES

Cast in the Town of Mount Crawford in the County of Rockingham, Virginia
at the November 2, 2010 General Election, for:

MAYOR

<i>NAMES OF CANDIDATES AS PRINTED ON BALLOT</i>	<i>TOTAL VOTES RECEIVED (IN FIGURES)</i>
<u>Alfred L. Cook</u>	<u>98</u>
_____	_____
Total Write-In Votes	<u>1</u>
Total Number of Overvotes for Office	<u>0</u>

ABSTRACT OF VOTES

Cast in the Town of Mount Crawford in the County of Rockingham , Virginia
at the November 2, 2010 General Election, for:

**MEMBER
TOWN COUNCIL**

ENTER AT LARGE OR APPROPRIATE DISTRICT OR WARD NAME

<i>NAMES OF CANDIDATES AS PRINTED ON BALLOT</i>	<i>TOTAL VOTES RECEIVED (IN FIGURES)</i>
<u>Carol A. Scheppard</u>	<u>93</u>
<u>Donna W. Trobaugh</u>	<u>95</u>
<u>Robert E. "Bob" Wimer</u>	<u>90</u>
Total Write-In Votes	<u>2</u>
Total Number of Overvotes for Office	<u>0</u>

ABSTRACT OF VOTES

Cast in the Town of Timberville in the County of Rockingham , Virginia
at the November 2, 2010 General Election, for:

MAYOR

<i>NAMES OF CANDIDATES AS PRINTED ON BALLOT</i>	<i>TOTAL VOTES RECEIVED (IN FIGURES)</i>
<u>Don P. Delaughter, Jr.</u>	<u>306</u>
<u> </u>	<u> </u>
Total Write-In Votes	<u>12</u>
Total Number of Overvotes for Office	<u>0</u>

ABSTRACT OF VOTES

Cast in the Town of Timberville in the County of Rockingham , Virginia
at the November 2, 2010 General Election, for:

**MEMBER
TOWN COUNCIL**

ENTER AT LARGE OR APPROPRIATE DISTRICT OR WARD NAME

<i>NAMES OF CANDIDATES AS PRINTED ON BALLOT</i>	<i>TOTAL VOTES RECEIVED (IN FIGURES)</i>
<u>Sharon M. Jones</u>	<u>270</u>
<u>B. Ellen Nash</u>	<u>232</u>
<u>Danny W. Sawyer</u>	<u>252</u>
Total Write-In Votes	<u>13</u>
Total Number of Overvotes for Office	<u>0</u>

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COUNTY ADMINISTRATOR'S STAFF REPORT.

The Board received and reviewed Administrator Paxton's staff report dated November 10, 2010.

Administrator Paxton attended a session on redistricting at the Virginia Association of Counties (VACo) Conference. The County should receive geographic data for the precinct boundaries, which will be loaded into the County's Geographic Information System (GIS). Detailed population information will be received by April 1, 2011, Administrator Paxton said.

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HUMAN RESOURCES DIRECTOR'S STAFF REPORT.

The Board received and reviewed Mr. Riddlebarger's staff report dated November 17, 2010.

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PUBLIC WORKS DIRECTOR'S STAFF REPORT.

The Board received and reviewed Mr. Heidt's staff report dated November 17, 2010.

In response to a question from Supervisor Kyger about bulk leaf disposal procedures since the main landfill disposal area is only open one Saturday a month, Mr. Heidt stated citizens should currently be able to dispose of bagged or bulk leaves but he will look into this and if there is an issue, it will be addressed.

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COMMUNITY DEVELOPMENT DIRECTOR'S STAFF REPORT.

The Board received and reviewed Mr. Vaughn's staff report dated November 17, 2010.

Mr. Vaughn noted that Shentel's special-use permit request for a telecommunications facility on Smithland Road was tabled in August due to foreclosure of the property. He reported that the property is under new ownership and the applicant would like the request removed from the table so Shentel can work through the details of this special-use permit with the new landowner.

Administrator Paxton advised that since the Board tabled the request until November 17, 2010, this needs to be removed from the table and tabled again. Chairman Cuevas suggested the request be tabled an additional 90 days.

On motion by Supervisor Floyd, seconded by Supervisor Kyger and carried by a vote of 5 to 0, voting recorded as follows: BREEDEN - AYE; CUEVAS - AYE; EBERLY - AYE; FLOYD - AYE; KYGER - AYE; the Board removed from the table SUP-121, Shenandoah Mobile Company, PO Box 459, Edinburg for a 150' unipole stealth telecommunication facility on property located on the northeast side of Smithland Road (Route 720) approximately 3/4 mile north of Keezletown Road (Route 925); Election District #3; Zoned A-1; Tax Map #110-(4)-1.

On motion by Supervisor Floyd, seconded by Supervisor Kyger and carried by a vote of 5 to 0, voting recorded as follows: BREEDEN - AYE; CUEVAS - AYE; EBERLY - AYE; FLOYD - AYE; KYGER - AYE; the Board tabled SUP-121, Shenandoah Mobile Company, PO Box 459, Edinburg for a 150' unipole stealth telecommunication facility on property located on the northeast side of Smithland Road (Route 720) approximately 3/4 mile north of Keezletown Road (Route 925); Election District #3; Zoned A-1; Tax Map #110-(4)-1, for no more than 90 days.

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INFORMATION SYSTEMS DIRECTOR'S STAFF REPORT.

The Board received and reviewed Mr. O'Byrne's staff report dated November 10, 2010.

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FIRE AND RESCUE CHIEF'S STAFF REPORT.

The Board received and reviewed Chief Symons' staff report dated November 8, 2010.

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RECREATION DIRECTOR'S STAFF REPORT.

The Board received and reviewed Mrs. McQuain's staff report dated November, 2010.

Supervisor Floyd requested an update on the park replacement in District 3. Administrator Paxton responded that Albert Long Park has not been sold yet. An interested party has been out of town and another inquiry was received last week. He believes the group searching for a new site for the park is waiting for Albert Long Park to be sold so they know how much money they will receive toward the purchase of another tract of land.

Chairman Cuevas suggested that Supervisor Floyd encourage the citizens to identify possible locations so they are ready to proceed when the money is available.

On motion by Supervisor Kyger, seconded by Supervisor Eberly and carried by a vote of 5 to 0, voting recorded as follows: BREEDEN - AYE; CUEVAS - AYE; EBERLY - AYE; FLOYD - AYE; KYGER - AYE; the Board re-appointed Philip Hutchinson to represent District 4 on the Recreation Commission for a four-year term to commence on January 1, 2011, and expire on December 31, 2014.

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COMMITTEE REPORTS.

BUILDING AND GROUNDS

Administrator Paxton advised that two bids were received for asbestos removal and three were received for remodeling the Bergton Community Center. The 2010-

2011 Budget for Buildings & Grounds included \$80,000 for this project. The combined cost of the two lowest bids totals \$66,144. The following bids were received:

Asbestos Removal Firm Name	Bid Price
Waco	\$10,200
Asbestco	\$16,960

Remodeling Contractor	Bid Price
Nielsen Construction	\$55,944
Lantz Construction	\$59,825
Dinks Construction	\$67,171

On motion by Supervisor Floyd, seconded by Supervisor Eberly and carried by a vote of 5 to 0, voting recorded as follows: BREEDEN - AYE; CUEVAS - AYE; EBERLY - AYE; FLOYD - AYE; KYGER - AYE; the Board accepted the recommendation from staff to contract with Waco for asbestos removal and with Nielsen Construction for completion of the Bergton Community Center renovation project, with the combined cost not to exceed \$66,144.

FINANCE

On motion by Supervisor Breedon, seconded by Supervisor Kyger and carried by a vote of 5 to 0, voting recorded as follows: BREEDEN - AYE; CUEVAS - AYE; EBERLY - AYE; FLOYD - AYE; KYGER - AYE; the Board approved the following FY2009-2010 Carryover Funds to FY2010-2011:

Sheriff

A carryover of unencumbered FY2009-2010 funds totaling \$6,980 for ammunition.

Carryover Appropriation: \$6,980

\$ 3,490	GL Code: 001-03102-000-6014-000	Sheriff - Other Operating Supplies
\$ 3,490	GL Code: 001-03302-000-6014-000	Jail – Other Operating Supplies
\$ 3,490	GL Code: 001-05201-0100	General Fund Reserve
\$ 3,490	GL Code: 001-01899-0600	Share of Costs - City

On motion by Supervisor Breedon, seconded by Supervisor Kyger and carried by a vote of 5 to 0, voting recorded as follows: BREEDEN - AYE; CUEVAS - AYE;

EBERLY - AYE; FLOYD - AYE; KYGER - AYE; the Board approved the following Asset Forfeiture Fund Appropriation:

A supplemental appropriation of \$1,000 for wiring/lines for a computer upgrade for the 287(g) project. Funding will be provided from the asset forfeiture revenue received.

Supplemental Appropriation: \$1,000

\$ 1,000 GL Code: 211-03507-100-3301-000 Repairs and Maintenance
\$ 1,000 GL Code: 211-03307-0100 Federal Forfeiture – Sheriff

HARRISONBURG-ROCKINGHAM METROPOLITAN PLANNING ORGANIZATION (MPO)

Administrator Paxton noted the MPO will meet on Thursday, November 18, 2010.

SOCIAL SERVICES

Supervisor Breeden reported the group will meet on December 2, 2010. Social Services needs sponsors for more than 300 families for Christmas.

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VIRGINIA ASSOCIATION OF COUNTIES (VACo)

Supervisor Kyger reported that the Annual VACo Meeting was successful and preparations are underway for a busy legislative session. Speaker Howell is looking to relieve local jurisdictions from unfunded mandates. Supervisor Kyger asked staff to look at unfunded mandates and determine if the County should subsidize them if the State discontinues funding. Supervisor Kyger stated the school division has also been asked to provide suggestions.

Administrator Paxton explained his frustration with the State creating programs and later discontinuing funding but expecting the localities to fund the programs. Most of the programs are worthwhile but not necessarily a priority for the County.

Supervisor Kyger said the County should not be required to provide or pay for State-established programs; the State should address those programs with State legislators.

Supervisor Eberly agreed that the County should not be required to fund state-mandated programs.

Chairman Cuevas attended a VACo session regarding planned reductions of 2-6% on budget items from the State to the localities. Since stimulus money may not be available in next year's budget, Chairman Cuevas suggested the County obtain the Study Commission's list outlining how to restructure local government to be more efficient. The department heads can provide input on the list, which will contain items pertaining to land use, personnel, benefits, constitutional officers and fire and rescue.

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FOOD DRIVE PROCLAMATION.

On motion by Supervisor Kyger, seconded by Supervisor Breeden and carried by a vote of 5 to 0, voting recorded as follows: BREEDEN - AYE; CUEVAS - AYE; EBERLY - AYE; FLOYD - AYE; KYGER - AYE; the Board endorsed the following Proclamation:

PROCLAMATION

WHEREAS, the U.S. economy continues to be slow in recovery and many persons in our local community are without employment and in need of the community's help with food and essentials; and

WHEREAS, the local Salvation Army, which serves as an important community resource for such persons and families, is experiencing a food shortage at its food pantry; and

WHEREAS, more than 900 families have requested the assistance of the Salvation Army this Thanksgiving season; and

WHEREAS, on November 19th, a month-long food drive, "Bust Hunger in the 'Burg and Rockingham County", has been spearheaded by Brent Berry and his family to encourage our community to stock the Salvation Army's food pantry for at least the upcoming six months; and

WHEREAS, many local businesses, schools and government agencies have endorsed this important community service effort to address the shortfall and meet the needs of those less fortunate.

NOW, THEREFORE, BE IT PROCLAIMED, by the Rockingham County Board of Supervisors, acting through its Chairman and on behalf of the citizens of the County, that November 19th, 2010, to be declared

BUST HUNGER IN THE BURG AND ROCKINGHAM COUNTY DAY

in Rockingham County, and urges all citizens of Rockingham County to participate in the month-long food drive, which will improve and enhance the lives of those less fortunate and promote the common good.

Supervisor Kyger advised that Turner Ashby High School is planning to collect food for this cause and challenged the other three County high schools to do the same.

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RECESS.

At 4:15 p.m., Chairman Cuevas declared the meeting recessed for Board members and staff to have dinner with the County's Extension Leadership Council.

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RECONVENE MEETING.

At 6:00 p.m., Chairman Cuevas reconvened the regular meeting.

On behalf of Chairman Cuevas, on motion by Supervisor Kyger, seconded by Supervisor Breeden and carried by a vote of 5 to 0, voting recorded as follows: BREEDEN - AYE; CUEVAS - AYE; EBERLY - AYE; FLOYD - AYE; KYGER - AYE; the Board authorized the County Administrator to send a letter to Virginia Tech endorsing Rockingham County as a site for the Virginia Cooperative Extension to establish a regional business center, and also endorsed the concept that services for Augusta, Rockingham, Shenandoah and Page, and the cities therein be co-located at that site.

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PUBLIC HEARING – SPECIAL-USE PERMIT REQUEST.

At 6:01 p.m., Chairman Cuevas opened the public hearing and Ms. Stultz reviewed the following special-use permit applications:

SUP-183 Mill Creek Church of the Brethren Preschool, 7600 Port Republic Road, Port Republic for a preschool on property located on the west side of Port Republic Road (Route 253) approximately 1,000 feet north of Mill

Creek Church Road (Route 673); Election District #3; Zoned A-2; Tax Map #140-(A)-65NT.

Ms. Stultz reported that permits were not obtained for the existing preschool which has been in operation since 1996. When the church contacted the County for inspections to move to a new area of the church, it was determined that there was no approval for the existing preschool.

The Board Chair and Acting Director of the preschool, Dan Morgan, stated the preschool was not aware it needed a special-use permit. They currently serve seven children, have been performing required water tests, are handicapped accessible and conduct fire drills.

No one spoke in opposition to this request.

SUP-184 Paws-N-Effect, LLC, 840 Dinkel Avenue, Mt. Crawford for a veterinary clinic on property located on the northeast side of Dinkel Avenue (Route 257) approximately 3/4 mile northwest of S. Valley Pike (Route 11); Election District #4; Zoned A-2; Tax Map #137-(A)-5A.

Dr. Erica Vaughan stated she and her husband are members of Paws-N-Effect, LLC and they would like to restore the clinic to its former condition to serve the community.

No one spoke in opposition to this request.

SUP-187 Bear Lithia Springs Baptist Church, 2145 North East Side Highway, for a cemetery on property located on the west side of N. East Side Highway (Route 340) approximately 600 feet south of Bear Lithia Road (Route 607); Election District #5; Zoned A-1; Tax Map #115-(A)-161B3.

In response to a question from Supervisor Breeden, Ms. Stultz stated the Town of Elkton had no concerns.

In response to a question from Chairman Cuevas, Pastor Don Leatherman stated the church wants to start with a small cemetery and expand it when needed. Their request is for $\frac{3}{4}$ of an acre as his research suggests a $\frac{1}{2}$ to 1 acre should be sufficient for their church for 40 years.

Supervisor Breeden noted the property has room for expansion.

Chairman Cuevas confirmed that the applicant was informed of restricted land uses close to a cemetery.

Upon Chairman Cuevas' request for a show of hands as to how many church members were present, approximately 85% of those in attendance raised their hands.

No one spoke in opposition to this request.

SUP-189 Cindy Lee Craun, 6276 Scotts Ford Road, Mt. Crawford requesting a bed and breakfast on property located on the southwest side of Scotts Ford Road (Route 677) approximately 1/2 mile northwest of Timber Ridge Road (Route 668); Election District #3; Zoned A-2; Tax Map #151-(A)-38A1.

The applicant stated the property is her family home and she is the fourth-generation owner. She bought the property in 1999 and made extensive improvements. Ms. Craun has been working with an engineer and a soil specialist on the septic system and has installed smoke detectors. She stated her neighbors verbally approved having a bed and breakfast in the community.

William S. Craun, the applicant's father, stated he has property all around this home and is in favor of the bed and breakfast.

Jim Updyke, a neighbor across the road from the property, is in favor of the bed and breakfast. He has stayed in bed and breakfasts and enjoys the peace and quiet. He does not believe this will negatively affect the setting.

Rick Blackwell, an environmental engineer specializing in alternative septic systems, noted that because of the age of the home, the septic system issues were unclear. The system is working properly but Ms. Craun did not have the proper paperwork. He indicated that Sol Services Inc. believes a solution can be worked out on this property. Since the health department has agreed to this type system, Ms. Craun is modifying the existing system.

No one spoke in opposition to this request.

Supervisor Breeden stated that he has a financial interest in the Peak After School request since his wife serves on the Board. Therefore, he abstained from voting.

SUP-196 Peak After School, 38 Bloomer Springs Road, McGaheysville for child care/after-school care on property located on the north side of McGaheysville Road (Route 996) approximately 680 feet west of Funkhouser Road (Route 703), mailing address being 8601 McGaheysville Road; Election District #5; Zoned A-2; Tax Map #141-(2)-2.

Dan Breeden advised that he is an administrative advisor to the afterschool program and a member of the leadership team for the Mountain View Church of the Brethren where this daycare center will be located.

No one spoke in opposition to this request.

SUP-214 Brian Koerner, 134 Rhododendron Court, Massanutten for a second residence (for applicant) on property located on the south side of Union Springs Road (Route 933) approximately 1/2 mile west of Woodcock Lane (private); Election District #2; Zoned A-2; Tax Map #89-(A)-27.

The applicant said he and his wife would like to build a full-time residence on this tract of land which has been in his wife's family since the early 1900s.

No one spoke in opposition to this request.

SUP-227 Henry and Valory Terry, 7017 Simmers Valley Road, Harrisonburg for a second residence (for parents) on property located on the west side of Simmers Valley Road (Route 619) approximately 7/10 mile north of Longs Pump Road (Route 721); Election District #2; Zoned A-1; Tax Map #80-(3)-2.

The applicant noted his father is in failing health and is currently at Harrisonburg Health and Rehabilitation. His father's outlook is good for a number of years but he requires more help than the applicant's mother can provide. Mr. Terry would like for his parents to live next to him so he can assist his father with his daily needs. Since his parents currently rent, his mother will continue to need a place to live.

Supervisor Eberly applauded Mr. Terry for assisting his parents, but stated the Board does not want this to become a rental property.

Mr. Terry stated this will not become a rental property. The manufactured home will be close to his home so he can easily check on his parents and he would not want other people living that close to him. Since the home will be in the middle of his

property he could not subdivide because he would have to cross the neighbor's yard to access his poultry houses.

Chairman Cuevas reiterated that the Board avoids rentals on A-1 property but wants to help farmers.

No one spoke in opposition to this request.

At 6:38 p.m., Chairman Cuevas closed the public hearing and reconvened the regular meeting.

On motion by Supervisor Floyd, seconded by Supervisor Eberly and carried by a vote of 5 to 0, voting recorded as follows: BREEDEN – AYE; CUEVAS – AYE; EBERLY – AYE; FLOYD – AYE; KYGER – AYE; the Board, subject to the following conditions, approved SUP-183, Mill Creek Church of the Brethren Preschool, 7600 Port Republic Road, Port Republic for a preschool on property located on the west side of Port Republic Road (Route 253) approximately 1,000 feet north of Mill Creek Church Road (Route 673); Election District #3; Zoned A-2; Tax Map #140-(A)-65NT.

1. Use shall be located in substantial accordance with plot plan as approved.
2. Sealed drawings from an architect or designer shall be submitted to the Building Official to determine if the area of the building to be used is code compliant.
3. The area used for the preschool shall comply with the Virginia Uniform Statewide Building Code. If determined that it is not code compliant, the proper permits shall be obtained to bring the area into compliance.
4. Prior to expansion of the preschool, the church shall obtain approval from the Office of Drinking Water for a regulated well. A copy of that approval shall be submitted to the Zoning Administrator to be made a part of the special use permit file.
5. The site plan application shall be updated to reflect the area used for the preschool.
6. This number of children in the preschool shall be limited to no more than 54 as approved by the Social Services licensing agency.
7. A certificate of occupancy shall be obtained to convert the area to be used from a church to a preschool.

On motion by Supervisor Kyger, seconded by Supervisor Breeden and carried by a vote of 5 to 0, voting recorded as follows: BREEDEN – AYE; CUEVAS – AYE; EBERLY – AYE; FLOYD – AYE; KYGER – AYE; the Board, subject to the following conditions, approved SUP-184, Paws-N-Effect, LLC, 840 Dinkel Avenue, Mt. Crawford for a veterinary clinic on property located on the northeast side of Dinkel Avenue (Route 257) approximately 3/4 mile northwest of S. Valley Pike (Route 11); Election District #4; Zoned A-2; Tax Map #137-(A)-5A.

1. Use shall be located in substantial accordance with plot plan as approved.
2. This permit is contingent upon the applicant submitting information to the Health Department and the Zoning Administrator showing that the septic system will not be overloaded and that the recommended evaluation was satisfactory.
3. This business shall not begin operating from this location until the Health Department has evaluated the engineering information and submitted its final determination to the Zoning Administrator. Upon the Zoning Administrator receiving a final report from the Health Department, the applicant shall be notified of the status of the permit.
4. If there are continued or future problems with the septic system, as indicated by the Health Department this business shall be required to hook to public sewer in order to remain in business.
5. If a site plan is required by the County, this business shall not open until such time as there is final site plan approval.
6. As required by the Building Official, the applicant shall submit asbestos findings prior to replacement of the roof.
7. The applicant shall meet all requirements of the Virginia Uniform Statewide Building Code for handicapped accessibility.
8. As stated by the applicant, this shall be a small animal clinic only.

On motion by Supervisor Breeden, seconded by Supervisor Kyger and carried by a vote of 5 to 0, voting recorded as follows: BREEDEN – AYE; CUEVAS – AYE; EBERLY – AYE; FLOYD – AYE; KYGER – AYE; the Board, subject to the following conditions, approved SUP-187, Bear Lithia Springs Baptist Church, 2145 North East Side Highway, for a cemetery on property located on the west side of N. East Side Highway (Route 340) approximately 600 feet south of Bear Lithia Road (Route 607); Election District #5; Zoned A-1; Tax Map #115-(A)-161B3.

1. Use shall be located in substantial accordance with plot plan as approved.
2. The area to be used for the cemetery shall be fenced so as to designate the 3/4 acre approved for the cemetery.
3. The cemetery is exempted from the two-year requirement to be put into use. However, the required fence shall be installed within that two-year period.
4. An engineered site plan shall be submitted to and approved by Community Development Department prior to the use of this cemetery.
5. All setbacks set forth in Section 57-26 of the State Code of Virginia shall be met.
6. Applicant shall submit elevation shots to the Community Development Department to determine if the cemetery is in the 100-year floodplain.
7. If the cemetery is in the floodplain, no large headstones or mausoleums shall be permitted.

On motion by Supervisor Floyd, seconded by Supervisor Kyger and carried by a vote of 5 to 0, voting recorded as follows: BREEDEN – AYE; CUEVAS – AYE; EBERLY – AYE; FLOYD – AYE; KYGER – AYE; the Board, subject to the following conditions, approved SUP-189, Cindy Lee Craun, 6276 Scotts Ford Road, Mt. Crawford requesting a bed and breakfast on property located on the southwest side of Scotts Ford Road (Route 677) approximately 1/2 mile northwest of Timber Ridge Road (Route 668); Election District #3; Zoned A-2; Tax Map #151-(A)-38A1.

1. Use shall be located in substantial accordance with plot plan as approved.
2. As required by the Building Official, smoke detectors shall be placed inside each bedroom and outside each bedroom.
3. This permit is contingent upon the applicant satisfying the Health Department regarding the septic. Written certification from the Health Department that there is sufficient septic for this use shall be submitted to the Zoning Administrator prior to the business opening to the public.
4. As required by the Health Department, the applicant must contact that agency's Food Services division with regard to the serving of breakfast and the use of the kitchen. Written certification from the Food Services division of the Health Department that all requirements have been met shall be submitted to the Zoning Administrator prior to the opening of business.

5. The entrance shall be upgraded and the bank cut back in accordance with the permit obtained from VDOT.
6. This permit is contingent upon a site plan being submitted to and approved by the County. No permits shall be issued by the Department of Community Development and no work shall be done on the property until such time as a site plan is approved.
7. Off-street parking shall comply with the Rockingham County Code, and there shall be no parking on VDOT's right-of-way.
8. On-premise advertising sign shall comply with the Rockingham County Code, and a permit shall be obtained for any sign.
9. There shall be no off-premise signs allowed unless all County and VDOT requirements for outdoor advertising signs are met.

On motion by Supervisor Kyger, seconded by Supervisor Floyd and carried by a vote of 4 to 0, with one abstention, voting recorded as follows: BREEDEN – ABSTAIN; CUEVAS – AYE; EBERLY – AYE; FLOYD – AYE; KYGER – AYE; the Board, subject to the following conditions, approved SUP-196, Peak After School, 38 Bloomer Springs Road, McGaheysville for child care/after-school care on property located on the north side of McGaheysville Road (Route 996) approximately 680 feet west of Funkhouser Road (Route 703), mailing address being 8601 McGaheysville Road; Election District #5; Zoned A-2; Tax Map #141-(2)-2.

1. Use shall be located in substantial accordance with plot plan as approved.
2. If any alterations are made to the building for this use, they must be made in accordance with the Virginia Uniform Statewide Building Code and the proper permits shall be obtained.
3. On-premise advertising sign shall comply with the Rockingham County Code, and a permit shall be obtained for any sign.
4. There shall be no off-premise signs allowed unless all County and VDOT requirements for outdoor advertising signs are met.

On motion by Supervisor Eberly, seconded by Supervisor Floyd and carried by a vote of 5 to 0, voting recorded as follows: BREEDEN – AYE; CUEVAS – AYE;

EBERLY – AYE; FLOYD – AYE; KYGER – AYE; the Board, subject to the following conditions, approved SUP-214, Brian Koerner, 134 Rhododendron Court, Massanutten for a second residence (for applicant) on property located on the south side of Union Springs Road (Route 933) approximately 1/2 mile west of Woodcock Lane (private); Election District #2; Zoned A-2; Tax Map #89-(A)-27.

1. Use shall be located in substantial accordance with plot plan as approved.
2. The residence shall comply with the Virginia Uniform Statewide Building Code and the proper permits shall be obtained.
3. Neither the proposed residence nor the existing residence on the property shall be used for rental purposes.
4. The residence shall not be occupied until such time as a certificate of occupancy is issued by the County.

On motion by Supervisor Eberly, seconded by Supervisor Floyd and carried by a vote of 5 to 0, voting recorded as follows: BREEDEN – AYE; CUEVAS – AYE; EBERLY – AYE; FLOYD – AYE; KYGER – AYE; the Board, subject to the following conditions, approved SUP-227, Henry and Valory Terry, 7017 Simmers Valley Road, Harrisonburg for a second residence (for parents) on property located on the west side of Simmers Valley Road (Route 619) approximately 7/10 mile north of Longs Pump Road (Route 721); Election District #2; Zoned A-1; Tax Map #80-(3)-2.

1. Use shall be located in substantial accordance with plot plan as approved.
2. Residence shall comply with the Virginia Uniform Statewide Building Code and the proper permits shall be obtained.
3. This permit is contingent upon the applicant obtaining sewage disposal and water supply permits from the Health Department.
4. The manufactured home shall be skirted and the tongue removed (unless included within the skirting) within sixty (60) days of final inspection.
5. Residence shall not be used for rental purposes.
6. The residence shall not be occupied until such time as a certificate of occupancy is issued by the County. No certificate of occupancy shall be issued until all other conditions of this permit are met.

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RECESS.

At 6:41 p.m., Chairman Cuevas recessed the meeting to permit those in attendance for the special-use permit hearing to leave.

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PUBLIC HEARING – REZONING.

At 6:48 p.m., Chairman Cuevas opened the public hearing and Ms. Cooper reviewed the following rezoning request:

REZ-97 Wayne Good, 2879 Earmans Loop, Harrisonburg, VA to rezone 1 acre from A2 (General Agricultural) to M1-C (General Industrial with Conditions) on tax parcel 110-(A)-L102. The site is located on the west side of Earmans Loop (Route 860), and approximately 600 feet north of Old Furnace Road (Route 718), in Election District #3. The Comprehensive Plan designates this area as Agricultural Reserve. If the rezoning is approved, the applicant has proffered to use the one-acre lot for only a trucking business parking lot in which equipment parking will be limited to no more than 10 tractor and trailer combination units.

Ms. Cooper provided background information on this request: Following a citizen's complaint, Wayne Good's trucking company was found to be in violation of a zoning ordinance. At Mr. Good's request, zoning ordinance request OA09-02, an amendment to Chapter 17, Zoning Ordinance, to allow small trucking companies by special use permit in the A-2 District under Section 17-27(aw) and amend 17-6 to define small trucking company was brought before the Board on March 25, 2009 and tabled. It was removed from the table and denied on May 27, 2009. Mr. Good submitted a rezoning application on April 12, 2010 to rezone one acre of his property to M1 with conditions which would allow his small trucking company.

The Planning Commission tabled the rezoning request on July 7, 2010 and recommended denial on a 2-1 vote on October 5, 2010, concurring with the staff recommendation, which stated:

One of the Comprehensive Plan's primary goals is to preserve the agricultural industry and economy by using the Agricultural Reserve as an area planned for agricultural uses and uses that support agriculture. The proposed trucking business is not an agricultural use, and although the trucking business may be used to haul agricultural-related products, the business is not supporting agricultural uses on the subject property or in the immediate areas. In addition,

the proposed trucking business is a stand-alone industrial use not compatible with single-family residences on a narrow, small subdivision street. Furthermore, the applicant has not proffered to limit the available uses under M1 zoning leaving the potential of locating other industrial uses in an area zoned A2 and A1. The Agricultural Reserve is designed to “retain the rural character and scenic beauty of Rockingham County which is also a primary goal of the Comprehensive Plan. Limitations on non-agricultural uses will help in preserving these valued scenic qualities.

Staff provided the following update on July 23, 2010:

The applicant submitted proffers limiting the use on the property to equipment and employee vehicle parking only. In addition, equipment parking will be limited to no more than 10 tractor trailer combination units. Staff’s recommendation remains denial.

On November 3, 2010, on a 3-0 vote with two abstentions the Planning Commission requested an opportunity to reconsider this request after the 100-day review period which expired October 15, 2010.

Chairman Cuevas explained that this is a land use issue and does not imply any question regarding the integrity of the applicant. He also reminded the group that a rezoning remains with the property when ownership changes.

Wayne E. Good, owner and operator of W. E. Good Trucking, Inc. stated his business is not agricultural but does support agriculture and is a viable part of the community. They haul feed products and fertilizers, and also transport construction and road-building goods and products to other states. Mr. Good noted that 67% of the loads hauled during the first 10 months of this year were agricultural in nature. The County suggested Mr. Good request M-1 zoning which he believes is “overkill” but no other zoning will accommodate his business. He indicated other jurisdictions have zonings which support agriculture. Mr. Good stated his business has been at the same location since 1999 and creates little noise. The tractors remain hooked to trailers and he simply needs a gravel parking lot to park his trucks.

In response to questions from Supervisors Breeden and Eberly, Mr. Good indicated he has eight trucks (seven dump trucks and one grain hopper). His trucks do not travel in and out all day; most of them are gone from the referenced property all week or at least three days before returning.

In response to a question from Supervisor Kyger, Mr. Good noted that he cannot afford to purchase land to park his trucks. He has not been able to locate a trucking company that will rent parking spaces.

Planning Commissioner Jon Ritenour stated that W. E. Good Trucking is licensed by the Department of Transportation and the State. He said one complaint was received from a non-property owner that moved shortly after registering the complaint. Mr. Ritenour spoke with a number of Mr. Good's neighbors and none of them had a problem with the business being located there. Mr. Ritenour indicated the State Police are not aware of any accident surveys. Since a question was raised whether the business would devalue the surrounding area, Mr. Ritenour checked with the Commissioner of Revenue's office and found the surrounding properties increased in value slightly more than other properties in the County. He agreed that M-1-C is probably not a proper zoning but suggested something be worked out so this agricultural entrepreneurship can continue in that location. He noted some jurisdictions have supports which are covered by special-use permits or a revised ordinance amendment could be tied to a special-use permit specifically for the applicant and the business. He also suggested a sunset clause, similar to one in the recommended wind ordinance, be applied to the special-use permit or rezoning permit. He said "Sometimes you have to do what's right for the County."

No one spoke in opposition to this request.

Supervisor Floyd asked for a show of hands of people in attendance who support this request and approximately ten citizens raised their hands.

At 7:10 p.m., Chairman Cuevas closed the public hearing and reconvened the regular meeting.

Supervisor Floyd stated this has been a long, drawn out situation. He visited the site with the Planning Commissioner and believes this is a situation that should be examined further to determine if there is a way to work it out. He agreed with Mr. Good and Mr. Ritenour that M-1 is not a suitable zoning but suggested this possibly be worked out with a special-use permit containing a sunset clause.

Supervisor Floyd made a motion that the Board table REZ-97. Supervisor Eberly seconded the motion.

Supervisor Eberly stated a larger issue needs to be addressed, which is entrepreneurship in the County. Mr. Good's business started as a small cottage industry, then became successful and grew. According to Mr. Good, trucks are not traveling in and out frequently and this is not a truck terminal. Since this is a land use issue that does not fit into a category, Supervisor Eberly suggested the Board consider the ramifications of this request.

Chairman Cuevas advised that the Board cannot set a sunset clause and if this request does not stand the "test of the Court," it cannot be approved. He reiterated that when the business is sold, the zoning remains with the property, and he noted this

business is in a non-conductive area. However, he is in favor of structuring the County to accommodate small businesses. Chairman Cuevas indicated he is open to a solution that is legal and will stand the “test of the Court” since it is not the intent of the Board to shut down small businesses.

By a vote of 5 to 0, voting recorded as follows: BREEDEN - AYE; CUEVAS - AYE; EBERLY – AYE; FLOYD - AYE; KYGER - AYE; the Board tabled REZ-97, Wayne Good, 2879 Earmans Loop, Harrisonburg, VA to rezone 1 acre from A2 (General Agricultural) to M1-C (General Industrial with Conditions) on tax parcel 110-(A)-L102. The site is located on the west side of Earmans Loop (Rt. 860), and approximately 600 feet north of Old Furnace Road (Rt. 718), in Election District #3.

Supervisor Floyd asked about the rezoning permit having a sunset clause. Administrator Paxton explained that a rezoning remains with the property indefinitely while a special-use permit remains with the property for a period of time. If the intended use ceases for two to three years, the special-use permit is terminated. If a citizen is provided an opportunity through a special-use permit, that same opportunity should be provided to other citizens in an A-2 district in the County.

Supervisor Floyd suggested that a clause be included that if Mr. Good goes out of business the use can be revoked.

Ms. Stultz noted Mr. Good cannot apply for a special-use permit at this time; an ordinance amendment is required.

Supervisor Breeden stated that many small businesses park trucks in RR-1, A-1 or A-2 districts and the County needs to accommodate those businesses so citizens can earn a living.

Supervisor Kyger agreed with Supervisor Breeden but said consequences go along with accommodations. Neighborhood roads have been closed to truck traffic, so trucks should not be allowed in neighborhoods, he said.

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PUBLIC HEARING – ORDINANCES.

At 7:22 p.m., Chairman Cuevas opened the public hearing and Mr. Vaughn presented the staff report on the following wind energy ordinances (a copy of which is on file in the Community Development Department):

OA-31, An amendment to repeal Chapter 17, Article VII, Use Regulations, Division 6B, Wind Energy Systems and to enact Chapter 17, Article XII, Wind Energy Conversion Systems Division 1, Small Wind Energy Systems; and Division 2, Large-Scale Wind Energy

Systems. The purpose of this new Article XII is to regulate the placement, construction and modification of wind energy conversion systems in Rockingham County.

OA-32, An amendment to enact Chapter 17, Article III, Definitions of Terms, Section 17-6.2 Definitions for Standards for Wind Energy Conversion Systems. The purpose of this new Section 17-6.2 is to set forth the definitions of certain terms used in the regulation of wind energy conversion systems.

OA-33, An amendment to Chapter 17, Article VI, Uses in Districts to allow Wind Energy Conversion Systems as a permitted use or as a use by special use permit in certain zoning districts in Rockingham County.

Mr. Vaughn advised that there is not a sunset clause in any of these ordinances.

Mr. Vaughn noted that the current zoning ordinance has no provision for large scale wind energy. These ordinances will allow the Board to consider applications. This process began over 18 months ago. In July 2009, the Board appointed a 15-member workgroup. The draft ordinances were presented at a work session in April. In August, the Planning Commission held a public hearing to consider the drafts that are before Board with minor revisions and clarifications. The Planning Commission recommended approval of these drafts on September 7, 2010.

In response to numerous questions, Mr. Vaughn explained that VDOT will perform an analysis of the impact of moving objects. The applicant is responsible for the permit and associated costs. There is a provision to maintain access roads.

Administrator Paxton explained that public roads are covered in the ordinance but access to private roads is between the applicant and the property owner. The applicant cannot cross private property without permission or an easement. The property owner can require a copy of the easement and conditions for access to the property.

In response to a question from Supervisor Eberly, Mr. Vaughn responded that if the applicant indicates they are going to remove the turbine, they have one year to do so. If the wind farm is abandoned and inoperable for 180 days, the County can pull the bond and remove the structure.

Malcolm Cameron, a resident of the Scotts Ford Road area and representative of the Great Eastern Trail Association, applauded the people who worked on the ordinances. He advised that the Great Eastern Trail, which is a national multi-use trail extending from New York to Alabama, will go through the western corner of the County in the National Forest so he has concerns about large wind systems in that area. He questioned how much coordination has occurred with the National Forest since

they will be one of the adjoining landowners. Mr. Cameron expressed concern that the maximum 800-foot setback and the fall zone definition do not guarantee public safety. He also noted the turbines will be visible from a long distance. He believes National Forest roads will need to be used for transporting heavy equipment. Mr. Cameron stated that he likes the provision for notifying federal agencies if they are adjoining landowners but the ordinance does not indicate how long they will have to respond or whether their approval is needed.

Chairman Cuevas indicated that he has been disappointed with the response time of the federal government in the past. He also stated the Board is opposed to windmill farms on National Forest land.

Kim Sandum advised the Board of weaknesses in the ordinance as a consensus was not reached regarding low frequency noise, cost effectiveness of the wind energy project, construction impacts, as well as wildlife and bird impacts. Ms. Sandum noted that setbacks are only addressed for adjoining property lines. She believes setbacks from roads, trails and natural resources should also be addressed in the ordinance.

Mike Smith, who has lived in the Elkton area his entire life, expressed concerns about the structure height negatively affecting tourism and harming the local economy. He stated the setbacks are too small due to health issues caused by low-frequency noise. Fish, wildlife and native plant resources will be negatively affected, he said. He believes the proposed ordinances should be denied or changed due to the height, setbacks and low-frequency noise. Mr. Smith asked the Board to table these ordinances and consider other options such as the ridgeline protection ordinance in Tazewell County.

Chairman Cuevas explained that if the Board does not take action, the state or federal government will do so even though they are not familiar with this region. The County needs a local ordinance in place when a wind energy applicant requests a special-use permit, he said.

Larry Thomas, a West Virginia resident and President of the Allegheny Highlands Alliance, expressed concern about “cross-border” issues because West Virginia will be affected by wind turbines erected in Rockingham County. He noted that a wind project in Highland County has had significant visual impact on Camp Allegheny and a battlefield a mile and a half away. The Rockingham County project will significantly impact the view at historic, scenic and religious places in Pendleton County, West Virginia, he said. Mr. Thomas also indicated the stormwater drainage plan only extends to the Virginia line, not into West Virginia. He stated there needs to be an emergency service plan with backup procedures, and suggested the emergency plan be reviewed on an annual basis. He noted families who have lived on the mountain for many years and expect future generations to live there, consider an industrial project to be an intrusion on their property. Mr. Thomas has reviewed nine

studies dealing with noise issues and he expressed concern over the 800-foot setback in the proposed ordinances.

In response to Mr. Thomas's comments regarding an emergency services plan, Supervisor Kyger stated that due to standard operating procedures and an agreement with the Virginia Division of Forestry, the U.S. Forest Service and the National Park Service, the County has responded to emergencies in that area.

Chairman Cuevas stated that the Board opposes restricting access to the National Forest.

Dan Smith, a Board member from Cow Knob Wind, thanked the Board, staff and committee members for their work on the ordinances. Addressing concerns regarding the people who live on the mountain, Mr. Smith said the majority of the mountain top land is open and privately owned. The land has been farmed since 1860 and he thinks the landowners will continue to take care of themselves. The land will be protected through lease agreements. He asked that the Board approve the wind ordinances.

Emil Avram from Dominion Resources thanked the Board for its vision. He believes this is a fair and balanced process. He noted that Dominion endorses the proposed ordinances.

Jonathan Miles from James Madison University said the Governor's Energy Conference stressed the importance of considering options for energy and available resources. The Governor spoke at length about wind opportunities in Virginia. He expressed appreciation to the Board for its consideration as he endorsed the ordinances.

Chairman Cuevas asked those citizens in support of these ordinances to stand and approximately 20-25 people stood.

At 8:32 p.m., Chairman Cuevas reconvened the regular meeting.

On motion by Supervisor Eberly, seconded by Supervisor Kyger and carried by a vote of 5 to 0, voting recorded as follows: BREEDEN - AYE; CUEVAS - AYE; EBERLY - AYE; FLOYD - AYE; KYGER - AYE; the Board approved the following ordinances:

ORDINANCE REPEALING
AND RE-ENACTING
CERTAIN DESIGNATED DEFINITIONS
SECTION 17-6 AND SECTION 17-6.2
OF THE CODE OF ORDINANCES OF
ROCKINGHAM COUNTY, VIRGINIA

BE IT ORDAINED BY THE BOARD OF SUPERVISORS OF ROCKINGHAM COUNTY, VIRGINIA:

That those definitions in Section 17-6 “Specific Definitions” set forth below, and only those set forth below, be and hereby are repealed and re-enacted in Section 17-6.2 “Definitions for Standards for Wind Energy Conversion Systems” as set forth in the following paragraphs. All other definitions set forth in Section 17-6 shall remain unaffected by this ordinance, and are reaffirmed.

Article III. Definition of Terms

Section 17-6.2. Definitions for Standards for Wind Energy Conversion Systems

Balloon Test. A technique utilizing a balloon to demonstrate the height of a proposed wind energy structure.

Hybrid System. An energy system that uses more than one technology to produce energy or work (for example a wind-solar system).

Fall Zone. An area within a radius equal to the structure height within which there is a potential hazard from falling debris or collapsing material.

Large Scale Wind Energy System. A wind energy conversion system with a structure height greater than 80 feet or a rated output of electrical power production equipment greater than 5 megawatts.

Rated Nameplate Capacity. The maximum rated output of electric power production equipment, which is typically specified by the manufacturer with a “nameplate” on the equipment.

Shadow Flicker. The visible flicker effect when rotating turbine blades cast shadows on the ground and nearby structures causing the repeating pattern of light and shadow.

Small Wind Energy System. A wind energy conversion system with a maximum power that does not exceed 100 kW, which will be used primarily to reduce on-site consumption of utility power.

Structure Height. The vertical height of a wind energy structure measured from existing average grade to the tip of the rotor blade at its highest point, or blade-tip height.

Wind Energy. Power generated by converting the mechanical energy of the wind into electrical energy through the use of a wind generator.

Wind Energy Conversion System. Wind energy conversion systems include all equipment, machinery and structures utilized in connection with the conversion of wind to electricity. This includes, but is not limited to, new transmission lines needed to connect to local utility's electric transmission and/or distribution system, storage, collection and supply equipment, substations, transformers, service and access roads, and one or more wind turbines.

Wind Energy Structure. A wind energy conversion system consisting of a single wind turbine, wind energy tower, and associated controls or conversion electronics.

Wind Energy Tower. The structure on which the wind system is mounted.

Wind Energy Tower Height. The height above grade of the fixed portion of the wind energy tower, excluding the wind turbine itself.

Wind Farm. A piece of land on which wind energy conversion system is sited for the purpose of electricity generation.

Wind Monitoring or Meteorological Tower. A temporary tower equipped with devices to measure wind speeds and direction, and used to determine how much wind power a site can be expected to generate.

Wind Turbine. A device that converts kinetic wind energy into rotational mechanical energy that drives an electrical generator to create electrical energy.

ORDINANCE REPEALING
CHAPTER 17, ARTICLE VII
USE REGULATIONS, DIVISION 6B
AND RE-ENACTING
CHAPTER 17, ARTICLE XII
WIND ENERGY CONVERSION SYSTEMS
DIVISIONS 1 AND 2
OF THE CODE OF ORDINANCES OF
ROCKINGHAM COUNTY, VIRGINIA

BE IT ORDAINED BY THE BOARD OF SUPERVISORS OF ROCKINGHAM COUNTY, VIRGINIA:

That Article VII, Use Regulations, Division 6B “Wind Energy Systems” be repealed and Article XII Division 1 “Small Wind Energy Systems” and Article XII Division 2, “Large-Scale Wind Energy System” be enacted as set forth in the following paragraphs.

Article XII. Wind Energy Conversion Systems

Division 1. Small Wind Energy Systems

Section 17-263. Purpose and Intent

The purpose of this article is to regulate the placement, construction and modification of small wind energy systems while promoting the safe, effective and efficient use of small wind energy systems and not unreasonably interfering with the development of independent renewable energy sources.

Section 17-264. Applicability

The requirements set forth in this division shall govern the siting of small wind energy systems used to generate electricity or perform work which may be connected to the utility grid pursuant to the Virginia’s net metering laws (Code Of Virginia (COV) §56-594), serve as an independent source of energy, or serve in a hybrid system.

Section 17-265. Siting requirements

The requirements for siting and construction of all small wind energy systems regulated by this division shall include the following:

- (a) Small wind energy towers shall maintain a galvanized steel finish, unless FAA standards require otherwise, or if the owner is attempting to conform the wind energy tower to the surrounding environment and architecture, in which case it may be painted to reduce visual obtrusiveness. A photo simulation may be required.
- (b) Small wind energy systems shall not be artificially lighted unless required by the Federal Aviation Administration (FAA) or appropriate authority.
- (c) Small wind energy towers shall not have any signs, writing, or pictures that may be construed as advertising.

- (d) Small wind energy systems shall not exceed 60 decibels, as measured at the closest property line. The level, however, may be exceeded during short-term events such as severe windstorms.
- (e) The applicant shall provide evidence that the proposed height of the small wind energy system tower does not exceed the height recommended by the manufacturer or distributor of the system.
- (f) The applicant shall provide evidence that the provider of electric utility service to the site has been informed of the applicant's intent to install an interconnected customer-owned electricity generator, unless the applicant intends, and so states on the application, that the system will not be connected to the electricity grid. This action shall not construe approval for net metering by the electric utility.
- (g) The applicant shall provide information demonstrating that the system will be used primarily to reduce on-site consumption of electricity.
- (h) The wind energy tower height shall not exceed a maximum height of 65 feet on a parcel of less than five acres, or a maximum height of 80 feet on a parcel of five acres or more.
- (i) The minimum distance between the ground and any protruding blades utilized on a small wind energy system shall be 15 feet, as measured at the lowest point of the arc of the blades. The supporting wind energy tower shall also be enclosed with a 6-foot tall fence or the base of the wind energy tower shall not be climbable for a distance of 12 feet.
- (j) The applicant shall provide proof of adequate liability insurance for a small wind energy system. Whether or not the applicant is participating in the net metering program, the applicant shall meet the insurance coverage requirements set forth in 20 VAC 5-315-60.
- (k) The small wind energy system generators and alternators shall be constructed so as to prevent the emission of radio and television signals and shall comply with the provisions of Section 47 of the Federal Code of Regulations, Part 15 and subsequent revisions governing said emissions.

Section 17-266. Review Process

- (a) Administrative Review Process
 - (1) The installation of a small wind energy system in Prime Agricultural District A-1, General Agricultural A-2, and Public Service Zoning

District S-1, shall be considered provided that all requirements of these standards are met.

- (2) Applications shall be permitted “by-right” and be reviewed and considered for approval by the Director of Community Development or his designee.
- (3) Upon receipt of an application for small wind energy system the County shall send written notification to all adjoining landowners. A decision on the application shall not be made within 30 days of the receipt of the application. Applications requiring a special use permit shall meet all State Code requirements for public notification.

Section 17-267. Federal and State Requirements

- (a) Compliance with Uniform Statewide Building Code: Building permit applications for wind energy systems shall be accompanied by standard drawings of the wind turbine structure, including the wind energy tower, base, and footings. An engineering analysis of the wind energy tower showing compliance with the Uniform Statewide Building Code and certified by a licensed professional engineer shall also be submitted.
- (b) Compliance with FAA Regulations: Wind energy systems shall comply with applicable FAA regulations, including any necessary approvals for installations close to airports.
- (c) Compliance with National Electric Code: Building permit applications for wind energy systems shall be accompanied by a line drawing of the electrical components in sufficient detail to allow for a determination that the manner of installation conforms to the National Electrical Code.
- (d) Compliance with Regulations Governing Energy Net Metering: Wind energy systems connected to the utility grid shall comply with the Virginia Administrative Code 20 VAC 5-315: Regulations Governing Energy Net Metering.

Section 17-268. Setbacks

The wind energy system shall be set back a distance at least equal to one hundred ten (110) percent of the structure height from all adjacent property lines and a distance equal at least to one hundred and fifty (150) percent of the structure height from any dwelling inhabited by humans on neighboring property. These setbacks may be reduced by notarized consent of the owner of the property on which the requested wind energy system is to be erected and the adjacent landowner whose property line or

dwelling falls within the specified distance. Additionally such adjacent landowner must execute a deed of easement for the benefit of the property on which the wind energy system is to be erected prohibiting construction of any new structure on such adjacent property within the specified easement. Wind energy systems shall meet all setback requirements for primary structures for the zoning district in which the wind energy system is located in addition to the requirements set forth above. Additionally, no portion of the small wind energy system, including guy wire anchors, may extend closer than ten (10) feet to the property line.

Section 17-269. Removal of Defective or Abandoned Wind Energy Systems

Any wind energy system found to be unsafe by the building official shall be repaired by the owner to meet federal, state and local safety standards or removed within six months. Any wind energy system that is not operated for a continuous period of 24 months shall be considered abandoned and the owner of the system shall remove the turbine within ninety days of receipt of notice from the County instructing the owner to remove the abandoned wind energy system.

Reserved – Sections 270 to 279

Division 2. Large Scale Wind Energy Systems

Section 17-280. Purpose and Intent

The purpose of this article is to regulate the placement, construction and modification of wind energy conversion systems while promoting the safe, effective and efficient use of wind energy conversion systems and not unreasonably interfering with the development of independent renewable energy sources. These facilities will be considered for approval in locations deemed appropriate, while assessing the visual impacts and minimizing potential adverse safety and environmental impacts of the proposed facilities.

Specifically, the purposes of this article are to:

- (a) Permit the provision of wind energy services to the residents and businesses of the County in an orderly fashion;
- (b) Regulate the siting of wind energy conversion systems in the County;
- (c) Assess the visual impacts of the proposed facilities;
- (d) Minimize adverse safety and environmental impacts associated with proposed facilities through careful design, and siting techniques;

- (e) Avoid potential harm to persons and damage to property and natural resources posed by wind energy conversion systems by ensuring that such facilities are soundly and carefully designed, constructed, modified, maintained and removed when no longer used or determined to be structurally unsound;
- (f) Ensure that the deployment of wind energy conversion systems is compatible with surrounding land uses;
- (g) Protect the County's rural and scenic landscapes, including but not limited to cultural and historic sites;

Section 17-281. Applicability

In addition to the Special Use Permit application and review process and requirements, the additional regulations set forth in this division shall govern the siting of wind energy conversion systems used to generate electricity and connected to the local utility's electric transmission and/or distribution system, or used to generate electricity and connected pursuant to the Virginia's net metering laws (Code Of Virginia (COV) §56-594), serve as an independent source of energy, or serve in a hybrid system.

Section 17-282. General Requirements

The requirements for siting and construction of all wind energy conversion systems regulated by this division shall include the following:

- (a) The construction of a wind energy conversion system shall be permitted in the Prime Agricultural District A-1, General Agricultural District A-2, Public Service Zoning District S-1, subject to the issuance of appropriate approvals by the County and provided that the use complies with all requirements set forth in this Division.
- (b) Wind energy conversion systems shall be constructed and operated in locations that minimize adverse safety and environmental impacts. Approval shall not be granted unless it is found in writing that:
 - (1) the use will not pose a significant adverse impact to the health or public safety, or on the natural resources of the neighborhood;
 - (2) there will be no serious hazard to pedestrians or vehicles from the use; and
 - (3) adequate and appropriate facilities will be provided for the proper operation of the wind energy conversion system.
- (c) Wind energy structures shall maintain a painted, coated, or galvanized steel finish, unless Federal Aviation Administration (FAA) standards require

otherwise, or if the owner is attempting to have the structure conform to the surrounding environment and architecture, in which case the owner may propose an alternative to reduce visual obtrusiveness.

- (d) Wind energy conversion systems shall not be artificially lighted unless required by the FAA or an appropriate authority.
- (e) The applicant shall provide photo-simulations of proposed wind energy conversion system from at least three (3) different locations. The simulations shall show views of such simulated wind energy structures from such locations as property lines, roadways, as deemed necessary by the County in order to assess the visual impact of the wind energy system.
- (f) The applicant shall conduct balloon testing after the submission of the official application at the sites identified in the photo-simulations. Balloons shall be placed at each site for at least four (4) hours and flown at a height equal to the structure height requested in the application. The total number, locations, and type of balloons will be agreed upon by the County and the applicant. The balloon testing date and time shall be advertised at least two (2) weeks prior to the actual testing date.
- (g) Structures shall not have any signs, writings, or pictures that may be construed as advertising.
- (h) Wind energy conversion systems and temporary meteorological towers will not require a height exception under the provisions of these siting standards.
- (i) The County shall provide written notification to the office of a national or state forest, national or state park, wildlife management area, or known historic or cultural resource site, if a proposed wind energy conversion system is within five (5) miles of the boundary of said entity.
- (j) The applicant shall conduct two (2) public information meetings to discuss their development plans and obtain community feedback. The first meeting shall be held prior to application submission. The second meeting shall be held after the application submission but prior to the special use permit public hearing. Both meetings shall be advertised in the local paper of record.

Section 17-283. Height and Setbacks

- (a) Height
 - (1) The structure height shall not exceed 500 feet above the existing average grade. An exception as defined in Section 17-283 (a) (2) may be granted by the Board of Supervisors.

- (2) The Board of Supervisors may allow the height to exceed the specified limits as specified in Section 17-283 (a) (1) as part of the special use permit process if the project applicant can demonstrate:
 - a. That the additional height is needed and would result in significant additional benefits in terms of energy production and efficiency;
 - b. By submission of substantial evidence that such height reflects industry standards for a similarly rated wind energy conversion system;
 - c. That the proposed wind energy conversion system satisfies all other criteria for the granting of a special use permit under this section of the zoning ordinance; and
 - d. The allowance to exceed the height limit shall not constitute a variance from the Zoning Ordinance.

(b) Setbacks and Separation

- (1) The wind energy conversion system shall be set back a distance at least equal to 125 percent of the structure height from all adjoining non-participating property lines and a distance equal to 160% of the structure height or 800 feet, whichever is greater, from any residential or public use structure on neighboring property and any public use areas as determined by the Board of Supervisors. These setbacks may be reduced by notarized consent of the owner of the property on which the requested wind energy conversion system is to be erected and the adjoining landowner whose property line or dwelling falls within the specified distance. Additionally such adjoining landowner must execute a deed of easement for the benefit of the property on which the wind energy conversion system is to be erected prohibiting construction of any new structure on such adjacent property within the specified easement.
- (2) Wind energy conversion systems shall meet all setback requirements for primary structures for the zoning district in which the wind energy conversion system is located in addition to the requirements set forth above.
- (3) The setbacks shall be kept free of all habitable structures so long as the facility is in place; however, these areas need not be cleared of trees or other vegetation. Setbacks shall be measured from the outside surface at the base of the wind energy tower and in a horizontal direction. The

Board of Supervisors may reduce or increase the setbacks as appropriate, based on site specific considerations, and only after review of substantial evidence, including but not limited to detailed engineering reports or product engineering certification, which demonstrate that safety concerns have been adequately addressed and that setbacks have been complied with to the maximum extent practicable.

- (4) Such reduction of required setbacks, if granted, shall not constitute a variance from the Zoning Ordinance.

Section 17-284. Environmental

- (a) Wetlands

Wind energy conversion system shall be located in a manner consistent with all applicable local and state wetlands regulations.

- (b) Land Clearing/Open Space

Wind energy conversion system shall be designed to minimize land clearing, and shall avoid permanently protected open space when applicable.

- (c) Noise

The wind energy conversion systems shall not exceed 60 decibels, as measured at the closest non-participating property line. An analysis, prepared by a qualified acoustical engineer, shall be provided to demonstrate compliance with the standard for sound emission. Appropriate sound mitigation measures shall be applied when necessary.

- (d) Shadowing/Flicker

Wind energy conversion system shall be sited in a manner that does not result in significant shadowing or flicker impacts. The applicant has the burden of proving that this effect does not have significant adverse impact on habitable structures through siting or mitigation.

- (e) Fish, Wildlife, and Native Plant Protection

The proposed wind energy system shall be designed, constructed, and operated without significant adverse impact to fish, wildlife, or native plant resources, including fish and wildlife habitat, migratory routes, and state or federally-listed threatened or endangered fish, wildlife, or plant species, and to meet all state and federal environmental requirements.

(f) Hold Harmless

The owner, developer and operator, jointly and severally, of the wind energy system shall indemnify and hold Rockingham County harmless from any and all costs and expenses, and ordered reimbursements, penalties and fines, to the greatest extent permissible at law, resulting from any responsibility or liability, or alleged responsibility or liability, of any description under any state or federal law or regulation arising out of the construction or operation of the wind energy system. Costs and expenses shall include but not be limited to costs, expenses and attorney fees incurred in the negotiation and settlement of disputes over alleged liability, as well as those incurred in actual litigation.

Section 17-285. Federal and State Requirements

Wind energy conversion systems shall meet or exceed all applicable federal and state standards.

- (a) All regulatory requirements of the following agencies shall be met:
 - (1) Virginia State Corporation Commission (SCC).
 - (2) Virginia Department of Environmental Quality (DEQ).
- (b) If such standards and regulations are changed, then the owners and operators of the wind energy conversion systems governed by this ordinance shall bring such systems into compliance as required. Failure to comply with federal or state standards and regulations shall constitute grounds for condemnation and removal of the noncompliant systems by the County at the owner's or operator's expense.

Section 17-286. Review and Approval

- (a) The Board of Supervisors shall require a public hearing under the Special Use Permit Process for all applications for wind energy conversion systems regulated under this section.
- (b) All State and Federal requirements shall be met prior to application for construction of the wind energy structures with the exception of state approved pre-construction activity. Approval letters must be included with application.
- (c) Failure by the applicant, owner or operator to meet the conditions of the special use permit, or failure to meet the requirements of any State or Federal

Agency shall be grounds for the County to revoke the special use permit as outlined in Sec 17-207(m) of the Rockingham County Code.

- (d) The Board of Supervisors may submit the application to the Shenandoah Valley Airport Commission for review and comments.

Section 17-287. Site Access and Control

The applicant shall submit, at the time of application for a Special Use Permit, documentation of the legal right to install and use said property for the proposed facility. Documentation shall include proof of control over the land or possession of the right to use the land in the manner requested. The applicant may redact sensitive financial or confidential information. The County may ask that the applicant supply an attorney's opinion letter with documentation.

The applicant shall submit written documentation that the applicant or his assignee has accepted full financial responsibility for repairs to damage to private roads used during the construction or operation of the proposed facility. Private roads used to access the proposed facility, including roads that serve non-participating landowners, shall be restored and maintained to pre-construction conditions during operation of the facility.

Section 17-288. Proof of Liability Insurance

The applicant, owner and operator shall be required to provide evidence of the availability of liability insurance in an amount sufficient to cover loss or damage to persons and structures occasioned by the failure or use of the facility. Whether or not the applicant is participating in the net metering program, the applicant will be required to meet the insurance coverage requirements set forth in 20 VAC 5-315-60.

Section 17-289. Public Notification

- (a) The County shall post a sign on the property giving notice that a wind energy conversion system application has been filed; said sign shall be located within one (1) foot of the right-of-way of each public street or road, upon which the proposed wind energy conversion system fronts. The sign shall be placed on the property at main access to the site of the proposed facility. Where property does not front on an existing public right-of-way, said sign shall be placed within the right-of-way of the nearest street or road.
- (b) The County shall post a sign approximately ½ mile from the site on all roads serving the proposed site giving notice that a wind energy conversion system application has been filed.

Section 17-290. Application Submission, Associated Fees, and Review.

- (a) A completed wind energy conversion system application and all supporting documentation identified in Application Filing Requirements shall be submitted in accordance with the appropriate special use permit review schedule.
- (b) An application fee as established by the Board of Supervisors shall be submitted with the wind energy conversion system application.
- (c) Within 60 days of submission, the County shall review the application and make a determination regarding compliance with the ordinance. An incomplete application shall be returned to the applicant for correction and resubmission.

Section 17-291. Independent Consultant's Services

Within thirty (30) days of acceptance of a complete application, the County shall submit said application to an independent consultant for review and recommendations. The cost of these services will be borne by the applicant but included in the application fee.

Section 17-292. Modifications

The County shall be notified of all modifications to a wind energy conversion system made after issuance of the Special Use Permit. Such modifications shall require approval by the Board of Supervisors in accordance with the County's existing process for modifications to special use permit approvals.

An amendment of the special use permit shall not be required if the proposed changes reflect upgrade in technology in the models or manufacturer of wind turbines. This waiver is allowed only if the extension in the tower height is within 15 feet of the height granted and all other special use permit regulations and conditions are met.

Section 17-293. Monitoring and Maintenance.

As proposed, all requirements are specified to ensure a legally defensible position by the County.

- (a) The applicant shall maintain the wind energy conversion system in good condition. Such maintenance shall include, but not be limited to, painting, structural integrity of the foundation and support structure and security barrier (if applicable), and maintenance of the buffer areas and landscaping if present. Site access shall be maintained to a level acceptable to the Fire Chief. The project owner shall be responsible for the cost of maintaining the wind energy conversion system and access road, unless accepted as a public

way, and the cost of repairing any damage occurring as a result of operation and construction.

(b) State of the Station Report

- (1) The applicant shall provide to the Board of Supervisors an annual state of the station report. The report shall include a summary of all public information submitted annually to state and federal agencies.
- (2) The County Administrator and station manager or such other site officer as may be designated shall coordinate a public meeting date upon which a report shall be presented to the governing body.

(c) Notice shall be provided to the County of any change in ownership of the facility.

Section 17-294. Abandonment or Discontinuation of Use

- (a) At such time that a wind energy conversion system is scheduled to be abandoned or discontinued, the owner shall notify the County by certified U.S. mail of the proposed date of abandonment or discontinuation of operations.
- (b) Within 365 days of the date of abandonment or discontinuation, the owner shall physically remove the wind energy conversion system. This period may be extended at the request of the owner and at the discretion of the County. Physical removal shall include but not be limited to:
 - (1) Removal of the wind turbine and wind energy tower, all machinery, equipment, equipment shelters, security barriers and all appurtenant structures from the subject property;
 - (2) Proper disposal of all solid or hazardous materials and wastes from the site in accordance with local and state solid waste disposal regulations;
 - (3) Restoration of the location of the wind energy conversion system to its natural pre-existing condition, except that any landscaping or grading may remain in the after-condition if a written request is submitted by the landowner to the County.
 - (4) Foundations shall be removed to a depth of four (4) feet below ground level or covered to an equivalent depth with fill material. At the time of removal, the site shall be restored to its pre-existing condition. If a written request is submitted by the landowner to the

County then this requirement may be waived or altered for any other legally authorized use. Restoration shall be verified by the County.

- (c) If the wind energy conversion system, or any part thereof, is inoperable for more than 180 days and the owner fails to give such notice to the County, then the wind energy conversion system shall be considered abandoned or discontinued. The County shall determine in its discretion what proportion of the wind energy conversion system is inoperable for the wind energy conversion system to be considered abandoned.
- (d) Decommissioning
 - (1) If an applicant fails to remove a wind energy conversion system in accordance with this section of this ordinance, the County shall have the authority to enter the subject property and physically remove the facility. The County shall require the applicant, and/or subsequent owners of the property or wind energy conversion system, to provide a form of surety mutually agreeable to the applicant and the County to cover costs of the removal in the event the County must remove the facility.
 - (2) Prior to obtaining a Certificate of Occupancy from the County and on every tenth (10th) anniversary of the commencement of the commercial operation of the Project, applicant shall provide to the County an estimate of the projected salvage value of the turbines and other equipment to be removed from the Project site ("Salvage Value"), as well as the projected cost of removing the turbines and other equipment from the site as determined by an independent engineer mutually agreeable to the applicant and County ("Gross Decommissioning Cost").
 - (3) Based on this determination, applicant shall post and maintain decommissioning funds in an amount equal to Net Decommissioning Cost, that being Gross Decommissioning Cost minus Salvage value.
 - (4) Decommissioning Funds may be in the form of a performance bond, surety bond, letter of credit, corporate guarantee or other form of financial assurance as may be mutually acceptable to the applicant and the County.
 - (5) The Decommissioning Funds shall be posted and maintained with a bonding company or Federal or State chartered lending institution mutually agreeable to the applicant and County.

Section 17-295. Severability

The provisions of this section are severable and, in the event that any provision of this section is determined to be invalid for any reason, the remaining provisions shall remain in full force and effect.

ORDINANCE REPEALING
AND RE-ENACTING
CHAPTER 17, ARTICLE VI. USES IN DISTRICTS
OF THE CODE OF ORDINANCES OF
ROCKINGHAM COUNTY, VIRGINIA

BE IT ORDAINED BY THE BOARD OF SUPERVISORS OF ROCKINGHAM
COUNTY, VIRGINIA:

That Sections 17-22(x), 17-23(ad), 17-23(ah), 17-26(ai), 17-27(bb), 17-27(bf), 17-31(an), 17-36.2(c)(17), 17-39(n), 17-48.3(u), 17-51(f), 17-55(f), 17-58(l), 17-64(t), 17-79(i), 17-88(e), 17-92(ac), 17-97(r), 17-102(v), 17-106.1(c), 17-110(i), 17-110.1(c), and 17-280 be and hereby are repealed and re-enacted as follows:

ARTICLE VI. USES IN DISTRICTS

DIVISION 2. PRIME AGRICULTURAL DISTRICT A-1

Sec. 17-22. Permitted Uses.

(x) Small Wind Energy Systems as provided by Article XII Division 1 of this chapter.

Sec. 17-23. Special Uses

(ad) Reserved.

(ah) Large Scale Wind Energy Systems as provided by Article XII Division 2 of this chapter.

DIVISION 3. GENERAL AGRICULTURAL DISTRICT A-2

Sec. 17-26. Permitted Uses.

(ai) Small Wind Energy Systems as provided by Article XII Division 1 of this chapter.

Sec. 17-27. Special Uses

(bb) Reserved.

(bf) Large Scale Wind Energy Systems as provided by Article XII Division 2 of this chapter.

DIVISION 4. RURAL SERVICE DISTRICT RS-1

Sec. 17-31. Special Uses.

(an) Small Wind Energy Systems as provided by Article XII Division 1 of this chapter.

DIVISION 5. PLANNED COMMERCIAL DISTRICT (PCD)

Sec. 17-36.2. Permitted uses subject to conditions or limitations.

(c)(17) Small Wind Energy Systems as provided by Article XII Division 1 of this chapter.

DIVISION 6. RESIDENTIAL OR RECREATIONAL RR-1

Sec. 17-39. Special Uses.

(n) Small Wind Energy Systems as provided by Article XII Division 1 of this chapter.

DIVISION 6A. PLANNED GROWTH (PG)

Sec. 17-48.3. Special Uses.

(u) Small Wind Energy Systems as provided by Article XII Division 1 of this chapter.

DIVISION 7. LOW DENSITY RESIDENTIAL DISTRICT R-1

Sec. 17-51. Special Uses.

(f) Small Wind Energy Systems as provided by Article XII Division 1 of this chapter.

DIVISION 8. MEDIUM DENSITY RESIDENTIAL R-2

Sec. 17-55. Special Uses.

(f) Small Wind Energy Systems as provided by Article XII Division 1 of this chapter.

DIVISION 9. GENERAL RESIDENTIAL DISTRICT R-3

Sec. 17-58. Special Uses.

(l) Small Wind Energy Systems as provided by Article XII Division 1 of this chapter.

DIVISION 10. RESIDENTIAL PLANNED COMMUNITY DISTRICT R-4

Sec. 17-64. Permitted Uses.

(t) Small Wind Energy Systems as provided by Article XII Division 1 of this chapter by special use permit.

DIVISION 11. PLANNED RESIDENTIAL DISTRICT R-5

Sec. 17-79. Permitted Uses.

(i) Small Wind Energy Systems as provided by Article XII Division 1 of this chapter by special use permit.

DIVISION 12. MANUFACTURED HOME DISTRICT MH-1

Sec. 17-88. Special Uses.

(e) Small Wind Energy Systems as provided by Article XII Division 1 of this chapter.

DIVISION 13. GENERAL BUSINESS DISTRICT B1

Sec. 17-92. Special Uses.

(ac) Small Wind Energy Systems as provided by Article XII Division 1 of this chapter.

DIVISION 14. RURAL BUSINESS DISTRICT B-2

Sec. 17-97. Special Uses.

(r) Small Wind Energy Systems as provided by Article XII Division 1 of this chapter.

DIVISION 15. GENERAL INDUSTRIAL DISTRICT M-1

Sec. 17-102. Special Uses.

(v) Small Wind Energy Systems as provided by Article XII Division 1 of this chapter.

DIVISION 16. LIGHT INDUSTRIAL DISTRICT M-2

Sec. 17-106.1 Special Uses.

(c) Small Wind Energy Systems as provided by Article XII Division 1 of this chapter.

DIVISION 17. PUBLIC SERVICE DISTRICT S-1

Sec. 17-110. Permitted Uses.

(i) Small Wind Energy Systems as provided by Article XII Division 1 of this chapter.

Sec. 17-110.1 Special Uses.

(c) Large-Scale Wind Energy Systems as provided by Article XII Division 2 of this chapter.

Chairman Cuevas reminded those present that these ordinances provide a structure to address future requests that come before the Board. At that time, a public hearing will be held regarding the special-use permit request and changes can be made to the request.

oooooOooooo

RECESS.

At 8:35 p.m., Chairman Cuevas recessed the meeting to permit those people attending the wind ordinance portion of the meeting to leave.

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PUBLIC HEARING – ORDINANCE AMENDMENT.

At 8:38 p.m., Chairman Cuevas opened the public hearing and Mr. Thompson reviewed the following proposed ordinance amendment:

OA-37, An amendment to repeal and reenact Section 17-110 Proffered Conditions. It is the purpose of this Section to provide a more flexible and adaptive zoning through conditional zoning, whereby a zoning reclassification may be allowed subject to certain conditions proffered by the zoning applicant for the protection of the community's interests that are not generally applicable to land similarly zoned.

Mr. Thompson explained that this ordinance outlines what the State authorizes the County to do in relation to proffered conditions. It is a process for accepting and reviewing proffers and is a housekeeping item for compliance.

No one spoke regarding this ordinance amendment.

At 8:41 p.m., Chairman Cuevas reconvened the regular meeting.

On motion by Supervisor Floyd, seconded by Supervisor Kyger and carried by a vote of 5 to 0, voting recorded as follows: BREEDEN - AYE; CUEVAS - AYE; EBERLY - AYE; FLOYD - AYE; KYGER - AYE; the Board approved the following ordinance:

ORDINANCE REPEALING
AND RE-ENACTING
SECTION 17-210
THROUGH
SECTION 17-210.9
OF THE CODE OF ORDINANCES OF
ROCKINGHAM COUNTY, VIRGINIA

BE IT ORDAINED BY THE BOARD OF SUPERVISORS OF ROCKINGHAM COUNTY, VIRGINIA:

That Section 17-210. Same-proffered conditions be and hereby is repealed and re-enacted as follows:

Section 17-210. Conditional zoning.

(a) *Intent.* Pursuant to the authority granted in § 15.2-2298 of the Code of Virginia, the Board of Supervisors of Rockingham County adopts this Section for the purpose of providing more flexible and adaptive zoning in appropriate situations through conditional zoning, whereby a zoning reclassification may be allowed subject to certain conditions proffered by the applicant that are not generally applicable to land similarly zoned.

(b) *Proffer of conditions.* Any party who applies for a Zoning Map amendment (rezoning) of its property may, as part of the application, proffer, in writing, reasonable conditions concerning the use and development of the property, including dedication of real property of substantial value, substantial cash payments for or construction of substantial public improvements, including off-site improvements, that may benefit the applicant's property and the public welfare. If the requested rezoning is granted, the

proffered conditions shall be in addition to those regulations provided in Chapter 17 (Zoning) of the Rockingham County Code.

(c) *Acceptable proffers.* Proffers may only be accepted, provided that:

- (1) The rezoning itself gives rise to the need for the proffered conditions;
- (2) Such conditions have a reasonable relation to the rezoning; and
- (3) All such conditions are in conformity with the Comprehensive Plan of Rockingham County.

Section 17-210.1 Conditional zoning - *Form of proffers.*

(a) *Proffer statement.* All proffered conditions shall be set forth with clarity and specificity in a “proffer statement,” which shall follow the following format:

PROFFER STATEMENT

*RE: Applicant’s Name
Owner’s Name (if different from Applicant)
Date
Rezoning Case Number (if number has been assigned by the Community
Development Office)*

I (we) hereby proffer that the use and development of this property shall be in strict accordance with the following conditions:

- 1.
 - 2.
 - 3.
- Etc.*

(b) *Revisions to proffer statement.* Any revision to the proffer statement shall be submitted in the same format, with a new date, and shall include at the end of the statement the following:

The conditions set forth in this proffer statement supersede all conditions set forth in previous proffer statements submitted as part of this application.

(c) *Plan, profiles, etc.* The applicant may also proffer to use and develop the property in accordance with the schematic land use plan or other plans, profiles, elevations, demonstrative materials and written statement submitted as part of the general plan of development. In such case, the proffer statement shall make reference

to such materials, and each copy of such materials shall contain the following statement:

I hereby proffer that the use and development of this property shall be in strict accordance with the proffered conditions set forth herein and/or depicted thereon.

Section 17-210.2 Conditional zoning - *Procedure for submission and acceptance of proffer statements and materials.*

(a) *Original Submission.* All proffer statements and supporting materials shall be submitted at the time of application but may be amended from time to time as desired by the applicant. Substantial amendments submitted later than two (2) weeks before the public hearing of the Board of Supervisors or Planning Commission shall not be acceptable for incorporation into the staff report but shall be accepted for consideration of the need for further public hearing by the Board of Supervisors or Planning Commission, which may schedule an additional public hearing to consider late amendments, at its option.

(b) *Late submission of amendment.* Any late amendment submission shall act to extend, by a period of one month, the total time allowed by law for review and consideration of a rezoning request if, by virtue of the above requirement for an additional public hearing and the Board's schedule, the matter would be placed for hearing after the expiration of the allowed review period.

Section 17-210.3 Conditional zoning - *Effect of acceptance.*

(a) *Conditions binding upon adoption.* The governing body may adopt as a part of the Zoning Map the proffered conditions, in whole or in part, set forth by the applicant. Proffered conditions that are adopted by the governing body shall be binding on the use and development of the property and shall continue in full force and effect until a subsequent amendment changes the zoning on the specific lots or parcels covered by the conditions. However, those special conditions that were proffered and adopted shall continue to apply to the specific lots or parcels if the County subsequently enacts a comprehensive amendment to the zoning ordinance or implements a new or substantially revised zoning ordinance and/or map.

(b) *Map references, conformance to existing conditions.* The Zoning Map and other appropriate files maintained by the County shall reference the existence of adopted proffered conditions affecting various properties. Any site plan or subdivision plat thereafter submitted for the development of property to which proffered conditions apply shall conform to all such conditions and shall not be approved by any County official in the absence of such conformity. For the purpose of this section, "conformity" shall mean such conformity which leaves a reasonable margin of adjustment due to final engineering data but conforms to the general nature of the

development, the specific uses and also the layout depicted by the plans, profiles, elevations and other supporting material presented by the applicant.

Section 17-210.4 Conditional zoning - *Authority of zoning administrator*. The zoning administrator shall have all enforcement and administrative authority granted by § 15.2-2299 of the Virginia Code, as amended, in the enforcement and administration of conditions, once adopted and made part of this Chapter.

Section 17-210.5 Conditional zoning - *Bonding*. The County may require a secured bond, satisfactory to the County, in an amount sufficient for and conditioned upon the construction of any physical improvements required by the proffered conditions or a contract for the construction of such improvements and the contractor's guaranty, in like amount and so conditioned, which secured bond may be reduced or released by the County upon the submission of satisfactory evidence that the construction of such improvements has been completed in part or in whole respectively. Secured bonding shall be required no later than final site plan or subdivision plat approval.

Section 17-210.6 Conditional zoning - *Failure to comply, consequences*. Failure to meet or comply with any proffered condition shall be sufficient cause to deny the issuance of any and all permits issued by the County.

Section 17-210.7 Conditional zoning - *Right of appeal to Board of supervisors*.

(a) Any person aggrieved by any decision of the zoning administrator regarding any proffered condition or the regulations contained in these sections pertaining to conditional zoning, or the denial of any permit pursuant to these sections, may appeal such decision to the Board of Supervisors. Such appeal shall be filed within thirty (30) days from the date of notice of the decision by filing a notice of appeal with the zoning administrator. Such notice shall be a written statement specifying in full the grounds on which aggrieved and the basis for the appeal.

(b) Upon receipt of the appeal notice, the Board of Supervisors shall take such testimony as it deems appropriate and render its decision, in writing, within sixty (60) days after receipt of the appeal notice. The Board of Supervisors may reverse or affirm wholly or partly or may modify the decision of the zoning administrator brought upon appeal.

Section 17-210.8 Conditional zoning - *Review of map applications for zoning map amendments (rezonings) with proffer statements*.

(a) *Submissions*. All applications for rezonings, or zoning map amendments, shall be made to the Community Development Office.

(b) *Review*. When an amendment to the Zoning Map has been requested and a proffer statement is included with the application, the Planning Director shall cause the

requested amendments to be reviewed by such staff, departments, offices, agencies or other personnel as he finds appropriate, in a timely manner.

(c) *Summary of findings.* The review shall include an examination of the applicant's proffer statement and supporting materials. The Director may suggest revisions to the proffer statement in order to clarify the proffers volunteered by the applicant. In addition, before the application is scheduled for a public hearing before the Planning Commission, the Director shall present to the applicant a summary of the findings of the review in order that the applicant may make modifications of the application should he so desire.

(d) *Public hearing.* After the Director presents his summary of the review findings to the applicant, the application shall be referred to the Planning Commission for public hearing. The Director shall not be required to refer such application immediately but shall consider the applicant's preference, the Planning Commission's schedule and the appropriate use of County staff.

Section 210.9 Conditional zoning - *Amendments and variations of conditions after approval.*

(1) There shall be no amendment or variation of conditions created pursuant to the provisions of this Section until after a public hearing before the governing body advertised pursuant to the provisions of § 15.2-2204, Code of Virginia. However, where an amendment to proffered conditions is requested by the proffesor, and where such amendment does not affect conditions of use or density, the Board may waive the requirement for a public hearing (i) under this section and (ii) under any other statute, ordinance, or proffer requiring a public hearing prior to amendment of conditions created pursuant to this Section. Once so amended, the proffered conditions shall continue to be an amendment to the zoning ordinance and may be enforced by the County pursuant to the applicable provisions of this Section.

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ADJOURNMENT.

Chairman Cuevas adjourned the meeting at 8:41 p.m.

_____,
Chairman